

EXHIBIT 48

Atlanta, GA

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE LITIGATION) MDL No. 1456

-----) Civil Action

THIS DOCUMENT RELATES TO:) No. 01-12257-PBS

United States of America, ex. rel.) Hon. Patti Saris

Ven-a-Care of the Florida Keys,)

Inc., v. Abbott Laboratories, Inc.,)

Civil Action No. 06-11337-PBS; and)

United States of America, ex. rel.) VIDEOTAPED

Ven-a-Care of the Florida Keys,) DEPOSITION OF

Inc., v. Dey, Inc., et. al., Civil) THE GEORGIA

Action No. 05-11084-PBS; and United) DEPARTMENT OF

States of America, ex. rel.) COMMUNITY HEALTH

Ven-a-Care of the Florida Keys,) by JERRY

Inc., v. Boehringer Ingleheim) DUBBERLY

Corp. et. al., Civil Action)

No. 07-10248-PBS.) DECEMBER 15, 2008

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<p>1 authorized with our PBM.</p> <p>2 Q. Do you know of any court orders or</p> <p>3 budget conditions, just any kind of a reason</p> <p>4 where the reimbursement methodology set forth in</p> <p>5 the state plan was not followed?</p> <p>6 A. No.</p> <p>7 Q. In connection with the MAC program,</p> <p>8 have any Medicaid providers ever complained or --</p> <p>9 or otherwise objected to the particular value</p> <p>10 that was chosen -- chosen for reimbursement?</p> <p>11 A. Yes, they have.</p> <p>12 Q. How often does that happen?</p> <p>13 A. Fairly infrequently. I've only had one</p> <p>14 -- well, two providers who have raised the issue</p> <p>15 to me in the last almost, well, four and a half,</p> <p>16 five years. But they've -- they've raised an</p> <p>17 issue, and then we -- since those MACs are</p> <p>18 proprietary to our -- or the method for</p> <p>19 calculating those MACs are proprietary to our</p> <p>20 vendor, we refer them back to our vendor where</p> <p>21 they submit actual invoices, and the vendor</p> <p>22 reviews and adjusts the MAC rates if -- if</p>	<p>1 Q. Is it feasible to just set</p> <p>2 reimbursement for all NDCs at AWP minus 65</p> <p>3 percent?</p> <p>4 A. No. The MAC rate typically applies to</p> <p>5 generics, and generics are typically based upon</p> <p>6 pricing studies that some of the government</p> <p>7 entities have done. There's a wider margin</p> <p>8 between the published AWP and the actual</p> <p>9 acquisition cost for those drugs.</p> <p>10 (Whereupon a document was</p> <p>11 identified as Exhibit Georgia 014.)</p> <p>12 Q. (By Mr. Lavine) I just marked as</p> <p>13 Exhibit 14 a two-page document. It reflects at</p> <p>14 the top "Department of Health and Human Services"</p> <p>15 with a date of April 12th, 1994, with a document</p> <p>16 number at the lower right-hand side of HHC902-</p> <p>17 0878.</p> <p>18 I'll just ask you to take a look at</p> <p>19 that and then tell me if you recognize that</p> <p>20 document.</p> <p>21 A. I have seen it before.</p> <p>22 Q. Can you take a look at the next-to-last</p>
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<p>1 necessary or appropriate.</p> <p>2 Q. Are you aware of any time when the MAC</p> <p>3 amount had to actually be changed as a result of</p> <p>4 a provider submitting invoice information?</p> <p>5 A. Yes. Yes. There was -- there was one</p> <p>6 instance which actually applied to a -- a larger</p> <p>7 -- it wasn't -- it wasn't specific to one drug.</p> <p>8 Our PBM was applying a method -- the methodology</p> <p>9 that was more aggressive than what we had</p> <p>10 authorized.</p> <p>11 And so we had them readjust the</p> <p>12 methodology to -- to suit what we had proposed to</p> <p>13 them, which was an AWP of approximately -- AWP</p> <p>14 minus 65 percent range is where we had looked for</p> <p>15 most of our MACs to be set, 65 to 70 percent.</p> <p>16 Q. But what was the outcome of that</p> <p>17 particular situation? The MAC was set at a</p> <p>18 higher level?</p> <p>19 A. Correct.</p> <p>20 Q. And that was the only time you can</p> <p>21 think of where that happened?</p> <p>22 A. Right.</p>	<p>1 paragraph on page 2 starting with, We would also</p> <p>2 clarify our policy that a dispensing fee</p> <p>3 determination must be separate and distinct from</p> <p>4 the estimated acquisition cost determination --</p> <p>5 A. Yes.</p> <p>6 Q. -- and unrelated to the cost of the</p> <p>7 drug product.</p> <p>8 A. Yes.</p> <p>9 Q. Is -- is the state plan for Georgia</p> <p>10 Medicaid program consistent with that statement?</p> <p>11 MR. COLE: Object to the form.</p> <p>12 A. The acquisition cost and the dispensing</p> <p>13 fee are separately approved by CMS and our state</p> <p>14 plan.</p> <p>15 Q. (By Mr. Lavine) And does Georgia also</p> <p>16 have a policy known as a "most favored nation"</p> <p>17 regarding -- that applies to dispensing fees?</p> <p>18 A. We do.</p> <p>19 Q. Can you explain that.</p> <p>20 A. The most favored nation requirement is</p> <p>21 that a pharmacy must pass along to the department</p> <p>22 the lowest reimbursement methodology that it</p>

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<p style="text-align: right;">Page 134</p> <p>1 independent pharmacists tend to predominate over 2 chain pharmacies? 3 MR. LAVINE: Object to form. 4 A. In general. 5 Q. (By Mr. Robben) In general? Okay. 6 So to provide access to pharmacies in a 7 rural area, is it important to the Medicaid 8 program to have the participation of independent 9 pharmacists since they predominate? 10 A. It is. 11 Q. You said before -- and I'm just 12 paraphrasing -- that the -- the Medicaid program 13 allows pharmacies to participate. 14 Is it fair to say that pharmacies 15 aren't required to participate? 16 A. That's true. 17 Q. It's a voluntary arrangement. 18 A. That's true. 19 Q. Do you have a sense as to what 20 percentage of pharmacies participate in the 21 program? 22 A. I do not.</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. About how frequently would a -- one of 2 -- would a member of one of these -- or would a 3 representative of one of these groups contact 4 you? 5 A. In my previous role as pharmacy 6 director, contact with Georgia Pharmacy 7 Association and the Academy of Independent 8 Pharmacists, which are -- worked together was 9 probably once a week, once every two weeks, or 10 something like that, on different issues. Less 11 frequently with NACDS. 12 Q. Is one of the issues that's important 13 to organizations like the Georgia Pharmacy 14 Association and NACDS pharmacy reimbursement? 15 A. It is. 16 MR. LAVINE: Object to form. 17 Q. (By Mr. Robben) And would those 18 organizations contact Georgia Medicaid from time 19 to time about reimbursement issues? 20 A. They -- they have and do. 21 Q. And do those same organizations tend to 22 lobby elected officials?</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Is it fair to say that different types 2 of pharmacies, urban versus rural or chain versus 3 independent, have different types of cost 4 structures? 5 MR. LAVINE: Object to form. 6 A. I have no personal knowledge of their 7 cost structures. 8 Q. (By Mr. Robben) Does the State of 9 Georgia have any knowledge? 10 A. No. 11 Q. Do the -- does the pharmacist community 12 in Georgia have trade groups or advocacy groups? 13 A. They do. 14 Q. Do you know the names of some of those? 15 A. The Georgia Pharmacy Association is 16 one, the Georgia Academy of Independent 17 Pharmacists, and also the Georgia chapter of the 18 National Association of Chain Drugstores, NACDS. 19 Q. Do you ever have any communication with 20 those -- with representatives from those 21 organizations in your role? 22 A. I do.</p>	<p style="text-align: right;">Page 137</p> <p>1 MR. LAVINE: Object to form. 2 A. They do. 3 Q. (By Mr. Robben) Governor's office? 4 MR. LAVINE: Object to form. 5 A. My assumption? 6 Q. (By Mr. Robben) Do you have any 7 personal? 8 A. I don't have personal knowledge of 9 that. 10 Q. When a -- when a pharmacist or a 11 pharmacy organization contacts the Georgia 12 Medicaid program, is consideration given to their 13 concerns? 14 MR. LAVINE: Object to form. 15 A. We hear their concerns and try to do 16 what things are appropriate and necessary to 17 address their concerns if they're -- if they're 18 valid issues that we can work with. 19 Your word "consideration" bothers me. 20 Q. (By Mr. Robben) Okay. Are you saying 21 that if they contact the Medicaid program, 22 they're listened to, but there's no guarantee</p>

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<p>1 that they're going to get a result?</p> <p>2 MR. LAVINE: Object to form.</p> <p>3 A. They will get a result. It may not be</p> <p>4 the result they look for.</p> <p>5 Q. (By Mr. Robben) Was that the problem</p> <p>6 with "consideration"?</p> <p>7 A. Yes.</p> <p>8 Q. Is it -- is it fair to say that</p> <p>9 pharmacy and pharmacist advocacy groups have</p> <p>10 tried to put pressure on the Georgia Medicaid</p> <p>11 program to keep reimbursements as high as</p> <p>12 possible?</p> <p>13 MR. LAVINE: Object to form.</p> <p>14 A. Yes.</p> <p>15 Q. (By Mr. Robben) When -- has there ever</p> <p>16 been a circumstance where reimbursement might be</p> <p>17 lowered and they called up and expressed concern</p> <p>18 about that?</p> <p>19 A. Yes.</p> <p>20 Q. Has that happened every -- every time</p> <p>21 there was some proposal to lower reimbursement?</p> <p>22 MR. LAVINE: Object to form.</p>	<p>1 other -- other programs.</p> <p>2 Those were typical conversation points.</p> <p>3 Q. When they voiced concerns about</p> <p>4 sustainability, was their concern that if</p> <p>5 reimbursement wasn't high enough, they wouldn't</p> <p>6 be able to stay in business?</p> <p>7 MR. LAVINE: Object to form.</p> <p>8 A. Yes. And hence decreased</p> <p>9 accessibility.</p> <p>10 Q. (By Mr. Robben) Okay. So -- so was</p> <p>11 the sustainability concern both as to their own</p> <p>12 sustainability as a business and as to the</p> <p>13 Medicaid program's ability to provide access to</p> <p>14 beneficiaries?</p> <p>15 A. It was --</p> <p>16 MR. LAVINE: Object to form.</p> <p>17 A. It was presented as both to the</p> <p>18 department.</p> <p>19 Q. (By Mr. Robben) Now, you also</p> <p>20 mentioned that they had raised fairness concerns.</p> <p>21 What did you mean by that, or what --</p> <p>22 what did you understand them to mean by that?</p>
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<p>1 A. Every time since I've been at the</p> <p>2 department, yes.</p> <p>3 Q. (By Mr. Robben) And that's since 2004?</p> <p>4 A. Correct.</p> <p>5 Q. And have -- have those -- some of those</p> <p>6 concerns been voiced to you directly?</p> <p>7 A. Yes, they have.</p> <p>8 Q. Particularly in your former position as</p> <p>9 the pharmacy director?</p> <p>10 A. Correct.</p> <p>11 Q. What types of things would they say to</p> <p>12 you when they called or when they wrote or when</p> <p>13 they visited?</p> <p>14 A. Yeah.</p> <p>15 MR. LAVINE: Object to form.</p> <p>16 A. The concerns raised were the</p> <p>17 sustainability of pharmacies with a reimbursement</p> <p>18 cut -- reimbursement cuts, the fairness of the</p> <p>19 reimbursement, the difficulty in taking care of a</p> <p>20 Medicaid patient versus a non-Medicaid patient.</p> <p>21 The requirements for participating in</p> <p>22 the Medicaid program are more stringent than</p>	<p>1 A. That they were being put in a position</p> <p>2 with a reimbursement decrease where they were no</p> <p>3 longer able to stay in business. They were no</p> <p>4 longer able to sustain business, and it was not a</p> <p>5 fair and equitable reimbursement, and hence they</p> <p>6 would have to exit the program.</p> <p>7 Q. When they made those types of arguments</p> <p>8 or voiced those types of concerns, was there some</p> <p>9 understanding that if reimbursement was lowered,</p> <p>10 those pharmacies or the pharmacists in those</p> <p>11 groups would withdraw from the Medicaid program?</p> <p>12 MR. LAVINE: Object to form.</p> <p>13 A. We were threatened by that.</p> <p>14 Q. (By Mr. Robben) So they -- it wasn't</p> <p>15 just a -- it wasn't just a concern or it wasn't</p> <p>16 just a -- something that you gleaned from what</p> <p>17 they said.</p> <p>18 They explicitly threatened to leave the</p> <p>19 program.</p> <p>20 A. Yes.</p> <p>21 MR. LAVINE: Object to form.</p> <p>22 Q. (By Mr. Robben) So they -- they called</p>

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<p>1 Georgia State legislature ever passed legislation 2 that had the effect of changing the reimbursement 3 formula? 4 MR. LAVINE: Object to form. 5 A. Yes. Part of the process in Georgia is 6 that if there's a reimbursement rate change for a 7 provider, that's incorporated into our budget 8 proposal, and then there's a bill that gets 9 passed to -- to address the budget. 10 So in effect, the legislature does see 11 and approve those rates, although there's not a 12 specific or separate pharmacy reimbursement bill 13 that would go through the process. 14 Q. (By Mr. Robben) So let me just make 15 sure I understand. 16 Is -- is the legislature exercising 17 some oversight over the reimbursement formula by 18 changing the amount of money it will allocate for 19 reimbursement purposes? 20 A. In effect, yes. 21 MR. LAVINE: Object to form. 22 Q. (By Mr. Robben) So if the legislature</p>	<p>1 A. No. 2 MR. LAVINE: Object to form. 3 A. No. 4 Q. (By Mr. Robben) And have drug 5 manufacturers been involved in selecting the 6 various components of the reimbursement formula? 7 A. No -- 8 MR. LAVINE: Object to form. 9 A. -- they haven't. 10 Q. (By Mr. Robben) Let me just ask it 11 again so I can get a clean record. 12 Drug manufacturers haven't been 13 involved in selecting the components that go into 14 the reimbursement formula; correct? 15 MR. LAVINE: Object to form. 16 A. No, they have not. 17 Q. (By Mr. Robben) When pharmacies or 18 pharmacy groups, pharmacy associations contacted 19 the -- the program and made threats to leave the 20 program if reimbursement was lowered, what was 21 the result of those threats? 22 MR. LAVINE: Object to form.</p>
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<p>1 allocates in the budget a certain amount of 2 money, the department may need to change the 3 reimbursement formula to provide adequate 4 coverage given that available -- given those 5 available funds. 6 MR. LAVINE: Object to form. 7 A. That is possible, yes. 8 Q. (By Mr. Robben) But the legislature 9 doesn't pass a bill that says the reimbursement 10 for Medicaid drugs shall be AWP minus 11 or AWP 11 minus 10. 12 A. No, it does not. 13 Q. In setting the reimbursement formula -- 14 in -- strike that. 15 In setting reimbursement for 16 prescription drugs under the Georgia Medicaid 17 program, have drug manufacturers been involved in 18 that process? 19 A. No. 20 Q. Drug manufacturers haven't contacted 21 the Georgia Medicaid program and -- and lobbied 22 for a certain level of reimbursement, have they?</p>	<p>1 A. There was -- there was no result. It's 2 not that -- we didn't withdraw our proposed 3 decrease or anything like that. We moved forward 4 through the process. 5 Q. (By Mr. Robben) Is it fair to say that 6 over time, the reimbursement formula for Georgia 7 Medicaid has remained relatively constant? 8 MR. LAVINE: Object to form. 9 A. Yes, in general, that's true. 10 Q. (By Mr. Robben) So is it fair to say 11 that lobbying by pharmacy associations and 12 pharmacy advocacy groups might have played some 13 part in keeping reimbursement higher than it 14 otherwise would have been? 15 MR. LAVINE: Object to form. 16 A. That could be a contributor. 17 Q. (By Mr. Robben) What -- what could 18 also be contributing to the -- the reimbursement 19 rate remaining relatively constant? 20 A. The other agenda items of the 21 department, the -- the -- you know, we talked 22 about access as well, balancing access, looking</p>

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<p>1 at the -- you know, the influence of the -- of</p> <p>2 the individuals who are coming to us with those</p> <p>3 type concerns about reimbursement and</p> <p>4 sustainability.</p> <p>5 Q. So are you saying that the department</p> <p>6 has made decisions -- or Georgia Medicaid has</p> <p>7 made decisions as to the reimbursement rate based</p> <p>8 on concerns about access and based on concerns of</p> <p>9 having a sustainable program that adequately</p> <p>10 serves Medicaid beneficiaries?</p> <p>11 MR. LAVINE: Object to form.</p> <p>12 A. We have.</p> <p>13 MR. ROBBEN: I think we need to change</p> <p>14 the -- the tapes.</p> <p>15 THE VIDEOGRAPHER: This is the end of</p> <p>16 tape No. 2. Going off the record at 11:55 a.m.</p> <p>17 (Deposition in recess, 11:55 a.m.</p> <p>18 to 11:59 a.m.)</p> <p>19 THE VIDEOGRAPHER: This is the</p> <p>20 beginning of tape No. 3 in the deposition of</p> <p>21 Jerry Dubberly. Going on the record at 11:59</p> <p>22 a.m.</p>	<p>1 the physician.</p> <p>2 Q. Do they have to keep the prescription</p> <p>3 that the --</p> <p>4 A. The hard copy.</p> <p>5 Q. -- beneficiary gave them?</p> <p>6 Is there any anything else they have to</p> <p>7 keep?</p> <p>8 A. They also have to keep a signature log</p> <p>9 which verifies that the individual actually</p> <p>10 picked up the prescription. So both the</p> <p>11 prescription and the signature log to show the</p> <p>12 dispensing and the -- the member picking up the</p> <p>13 medication.</p> <p>14 Q. So whenever a Medicaid beneficiary goes</p> <p>15 to the pharmacist to pick up a prescription, they</p> <p>16 have to sign that they've taken it?</p> <p>17 A. That's true.</p> <p>18 Q. Does the record retention requirement</p> <p>19 require the pharmacies to keep any type of</p> <p>20 financial information related to the dispensing</p> <p>21 of the prescription?</p> <p>22 A. Well, they have to have invoices that</p>
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<p>1 Q. (By Mr. Robben) A couple of minutes</p> <p>2 ago we talked about the requirements that are</p> <p>3 placed on providers when they choose to join the</p> <p>4 Medicaid program.</p> <p>5 Is that -- are those requirements</p> <p>6 embodied in some type of agreement?</p> <p>7 A. Yes. There's a provider enrollment</p> <p>8 agreement that the provider agrees to.</p> <p>9 Q. As part of entering into that</p> <p>10 agreement, do pharmacies take on a record</p> <p>11 retention requirement?</p> <p>12 A. They do.</p> <p>13 Q. What are the -- at least currently,</p> <p>14 what are the aspects of that record retention</p> <p>15 requirement?</p> <p>16 A. Five -- five years. I believe it's</p> <p>17 five years.</p> <p>18 Q. What do they need to maintain for five</p> <p>19 years?</p> <p>20 A. The -- the record of the dispensing,</p> <p>21 which is the prescription -- the prescription</p> <p>22 that documents the -- you know, the order from</p>	<p>1 support that they actually had the medication in</p> <p>2 stock or recently had the medication in stock</p> <p>3 during that time period. So the invoices would</p> <p>4 actually be another component of that that they</p> <p>5 would have to produce.</p> <p>6 Q. Other than the prescription paper, the</p> <p>7 signature log, and the invoices to support stock</p> <p>8 levels, is there anything else you can think of</p> <p>9 that they need to retain?</p> <p>10 A. Those are the -- the major ones. I</p> <p>11 can't think of anything else right off the top of</p> <p>12 my head, no.</p> <p>13 Q. Is there any requirement that the</p> <p>14 invoice reflect the price that they paid to</p> <p>15 acquire the medication?</p> <p>16 A. No.</p> <p>17 MR. LAVINE: Object to form.</p> <p>18 A. No.</p> <p>19 Q. (By Mr. Robben) Are pharmacy providers</p> <p>20 audited in connection with their dispensing of</p> <p>21 prescriptions from time to time?</p> <p>22 A. They are.</p>

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<p>1 Do you see that?</p> <p>2 A. I'm sorry. Could you repeat that.</p> <p>3 Q. Sure. It was not a good question.</p> <p>4 Part 2 from the second page of Exhibit</p> <p>5 27 appears to be reproduced --</p> <p>6 A. Oh, from 27?</p> <p>7 Q. Yeah. 27 was the letter to Mark Trail.</p> <p>8 Do you see -- does it appear to you</p> <p>9 that point 2 on the second page of 27 is</p> <p>10 reproduced here with some additions?</p> <p>11 MR. LAVINE: Objection to form.</p> <p>12 A. So your question is on page 1 of</p> <p>13 Exhibit 27 --</p> <p>14 Q. (By Mr. Robben) Page 2 of Exhibit 27.</p> <p>15 A. Okay.</p> <p>16 Q. Sorry. The part I read from the bottom</p> <p>17 of the page.</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. I apologize.</p> <p>21 Q. No problem.</p> <p>22 So it -- it appears that that -- that</p>	<p>1 A. I wasn't privy to this discussion at</p> <p>2 this time.</p> <p>3 Q. (By Mr. Robben) Has -- it refers to an</p> <p>4 agreement made with the state legislature; right?</p> <p>5 MR. SULLIVAN: Object to the form.</p> <p>6 A. It does state that.</p> <p>7 Q. (By Mr. Robben) Has -- is -- is that a</p> <p>8 common phrasing of the -- of the relationship</p> <p>9 between the Georgia Medicaid program and the</p> <p>10 state legislature --</p> <p>11 MR. LAVINE: Object to form. Sorry.</p> <p>12 MR. ROBBEN: Strike that.</p> <p>13 Q. (By Mr. Robben) Is it common for</p> <p>14 people who work for the Georgia Medicaid program</p> <p>15 to refer to having made an agreement with the</p> <p>16 state legislature?</p> <p>17 MR. LAVINE: Object to form.</p> <p>18 A. I can't think of an example where we</p> <p>19 have made an agreement with the legislature. I</p> <p>20 guess for that to be common practice, it would</p> <p>21 have to be something I would be familiar with,</p> <p>22 and I'm not familiar with that practice.</p>
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<p>1 the letter to Mark Trail -- at least that part of</p> <p>2 it has been reproduced here, and some additional</p> <p>3 language has been inserted; is that fair?</p> <p>4 MR. LAVINE: Object to form.</p> <p>5 A. That's true.</p> <p>6 Q. (By Mr. Robben) Okay. And then the</p> <p>7 original language from the letter to Mark Trail</p> <p>8 in part was, "Why does the State believe a</p> <p>9 reduction in the estimated acquisition cost was</p> <p>10 not necessary"; right?</p> <p>11 A. Yes.</p> <p>12 Q. And then someone has inserted after</p> <p>13 that in an underlined text, "Politics?"</p> <p>14 And then that appears to have been</p> <p>15 crossed out, and in pen in the margin is written</p> <p>16 "Price based on AWP not," underlined, "WAC.</p> <p>17 Result of agreement made with state legislature."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Do you have any understanding of what</p> <p>21 that means?</p> <p>22 MR. SULLIVAN: Object to the form.</p>	<p>1 Q. (By Mr. Robben) Is it fair to say that</p> <p>2 the reimbursement rate -- strike that.</p> <p>3 Is it fair to say that the</p> <p>4 reimbursement formula that Georgia Medicaid</p> <p>5 applies has been shaped at least in part by</p> <p>6 political considerations?</p> <p>7 MR. LAVINE: Object to form.</p> <p>8 A. Yes.</p> <p>9 Q. (By Mr. Robben) And is that because</p> <p>10 providers have lobbied Georgia Medicaid and the</p> <p>11 state legislature and the governor when</p> <p>12 reimbursement hasn't been to their liking?</p> <p>13 MR. LAVINE: Object to form.</p> <p>14 MR. SULLIVAN: Object to form.</p> <p>15 A. The reason is that rate changes are</p> <p>16 included in the budget which is included in the</p> <p>17 bill which goes through the legislative process.</p> <p>18 I'm not aware of a situation where we</p> <p>19 have pulled back on reimbursement changes due to</p> <p>20 some agreement or other consideration made with</p> <p>21 the legislature.</p> <p>22 Q. (By Mr. Robben) Has it ever -- strike</p>

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<p>1 drugs.</p> <p>2 Answer: That's correct.</p> <p>3 MR. ROBBEN: And the site for that is</p> <p>4 Leo Sullivan's testimony at page 98, line 4 to</p> <p>5 99, line 9.</p> <p>6 Q. (By Mr. Robben) Did you understand the</p> <p>7 testimony I just read?</p> <p>8 MR. LAVINE: Object to form.</p> <p>9 MR. SULLIVAN: Object to form.</p> <p>10 A. I did.</p> <p>11 Q. (By Mr. Robben) Do you agree with Mr.</p> <p>12 Sullivan's characterization of AWP?</p> <p>13 MR. LAVINE: Object to form.</p> <p>14 A. I do.</p> <p>15 Q. (By Mr. Robben) Do you -- do you view</p> <p>16 -- strike that.</p> <p>17 MR. COLE: What was the answer to the</p> <p>18 last question?</p> <p>19 MR. ROBBEN: Can you read it back.</p> <p>20 THE COURT REPORTER: "I do."</p> <p>21 MR. COLE: Thank you.</p> <p>22 Q. (By Mr. Robben) Have you ever</p>	<p>1 testimony that a -- that a person couldn't hold a</p> <p>2 job as a -- as a pharmacy director or a Medicaid</p> <p>3 director in the United States and perform that</p> <p>4 job reliably and effectively if they didn't know</p> <p>5 that AWP wasn't a reliable predictor of</p> <p>6 acquisition costs?</p> <p>7 MR. LAVINE: Object to form.</p> <p>8 A. I think that's a personal judgment on -</p> <p>9 - on my part. I would -- I would question</p> <p>10 someone who did not have that knowledge.</p> <p>11 Q. (By Mr. Robben) So you would question</p> <p>12 their -- their abilities and their -- their</p> <p>13 skills if they didn't know that AWP wasn't a</p> <p>14 reliable predictor --</p> <p>15 A. Yeah.</p> <p>16 Q. -- of acquisition cost?</p> <p>17 MR. LAVINE: Object to form.</p> <p>18 A. Yes.</p> <p>19 Q. (By Mr. Robben) A little while ago I</p> <p>20 had asked you if you had knowledge of the company</p> <p>21 Dey, and you said that you had some familiarity</p> <p>22 with them. You had heard of them at least.</p>
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<p>1 discussed with Mr. Sullivan whether AWP</p> <p>2 approximated the acquisition cost of pharmacies?</p> <p>3 A. It's likely, but I don't recall a</p> <p>4 specific conversation.</p> <p>5 Q. Do you agree with Mr. Sullivan's</p> <p>6 testimony that just as everyone knows the sky is</p> <p>7 blue, your peers in state Medicaid programs know</p> <p>8 that AWP is not a reliable source for the prices</p> <p>9 that physicians and pharmacies pay for drugs?</p> <p>10 MR. LAVINE: Object to form.</p> <p>11 MR. SULLIVAN: Object to form and asked</p> <p>12 and answered.</p> <p>13 Q. (By Mr. Robben) You can answer.</p> <p>14 A. I certainly hope so.</p> <p>15 Q. What do you mean?</p> <p>16 A. I can't imagine a person performing the</p> <p>17 job without that knowledge.</p> <p>18 Q. Without the knowledge that AWP is not a</p> <p>19 reliable predictor?</p> <p>20 A. Exactly.</p> <p>21 MR. LAVINE: Object to form.</p> <p>22 Q. (By Mr. Robben) So is it -- is it your</p>	<p>1 Do you have any recollection of any</p> <p>2 communications with any representative of Dey?</p> <p>3 A. I have contact with a lot of different</p> <p>4 manufacturers. I don't recall specifically right</p> <p>5 off, but I'm sure at some point, I've had contact</p> <p>6 with someone from Dey.</p> <p>7 Q. Nothing stands out in your mind,</p> <p>8 though?</p> <p>9 A. Not right now.</p> <p>10 Q. Did -- to the best of your knowledge,</p> <p>11 did Georgia Medicaid ever issue any instruction</p> <p>12 to Dey as to how it should set or report or</p> <p>13 otherwise calculate AWP?</p> <p>14 MR. LAVINE: Object to form.</p> <p>15 A. No.</p> <p>16 Q. (By Mr. Robben) Has Georgia Medicaid</p> <p>17 ever made any communication to Dey that indicated</p> <p>18 that the way Dey set AWP or reported AWP was</p> <p>19 incorrect or unlawful?</p> <p>20 MR. LAVINE: Object to form.</p> <p>21 A. No.</p> <p>22 Q. (By Mr. Robben) Has Georgia Medicaid</p>

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<p>1 administrative functions of the -- the pharmacy 2 and purchasing medications, et cetera, and 3 oversight of the pharmacy operations. 4 I left the employment of Erlanger 5 Medical Center in July of 1996 and began work for 6 Consul Tech in Atlanta. Consul Tech was a -- is 7 a pharmacy benefit management organization that 8 was later purchased by Affiliated Computer 9 Services. 10 My roles with Consul Tech included 11 clinical services manager as well as director of 12 clinical services and client relations, which was 13 -- I was basically responsible for all of their 14 nationwide accounts at the time that I left 15 employment there, which was primarily Medicaid 16 agencies and state-funded pharmacy programs. 17 I left ACS in April of 2004 to work for 18 the Georgia Department of Community Health as 19 director of pharmacy services. And as we 20 discussed this morning, I moved to a deputy 21 director role June 1st of 2008 and then Medicaid 22 director October 1st of 2008.</p>	<p>1 A. Correct. 2 MS. TOWNES: I think we need to 3 remember to clarify that he was not at the 4 department during the time that you're asking him 5 what his understanding was. 6 He's testifying as a representative of 7 the department. So I think we just need to make 8 sure that that stays on the record, that you're 9 asking him about a time prior to his current 10 position. 11 MR. COLE: Yeah. I think the record is 12 -- is -- it's clear about that. But thank you 13 for -- for pointing that out. 14 Philip, if you would, could you hand 15 Mr. Dubberly the -- Abbott's cross-notice of this 16 deposition. It should be the bulkiest document 17 in the Redweld. 18 MR. ROBBEN: I have it. 19 MR. COLE: Thank you. 20 THE COURT REPORTER: Do you want that 21 marked as the next exhibit? 22 MR. COLE: Yes, please.</p>
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<p>1 Q. Thank you. 2 I believe you testified a few minutes 3 ago in response to some questions from Mr. Robben 4 that you understood dating back to the early to 5 mid-'90s that AWP was not an accurate reflection 6 of what physicians or providers paid to acquire 7 drugs. 8 Do you remember that question and 9 answer? 10 A. Yes. 11 MR. SULLIVAN: Object to the form. 12 A. Yes, I do. 13 Q. (By Mr. Cole) And would you have 14 acquired that knowledge then while you were 15 working for the Erlanger Medical Center in 16 Chattanooga as a staff pharmacist? 17 MR. SULLIVAN: Object to form. 18 A. Actually, as -- while I was working as 19 the director of pharmacy that they outsourced me 20 to -- while I was working for Erlanger, yes. 21 Q. So sometime in the 1990 to '96 time 22 frame, then.</p>	<p>1 (Whereupon a document was 2 identified as Exhibit Georgia 031.) 3 MR. SULLIVAN: 31? 4 THE COURT REPORTER: 31. 5 Q. (By Mr. Cole) Mr. Dubberly, you should 6 have in front of you Exhibit 31, which is a copy 7 of the -- of a cross-notice of -- of your 8 deposition for some cases involving Abbott. I 9 know it's a bulky document. 10 I'm only going to ask you about a 11 couple of portions of it. 12 If you would go to Exhibit 1 of the 13 document -- Exhibit 1 of Exhibit 31 -- let me 14 back up for a second. 15 Have you seen this document before 16 today, sir? 17 A. I've seen -- yes, I've seen this 18 document. 19 Q. And do you see the topics listed in 20 Exhibit 1 to Exhibit 31? 21 I believe it's on approximately page 8 22 of the exhibit. It has "Topics of Inquiry" at</p>

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<p>1 submits a claim.</p> <p>2 A. That is correct.</p> <p>3 Q. Mr. Robben asked you some questions</p> <p>4 about the interplay between the -- the</p> <p>5 reimbursement of ingredient costs and the</p> <p>6 reimbursement for dispensing costs.</p> <p>7 Do you remember those questions, sir?</p> <p>8 A. Yes.</p> <p>9 Q. And I believe you said that -- that the</p> <p>10 Georgia Medicaid program understood that -- that</p> <p>11 they were providing a -- a profit margin to</p> <p>12 providers in reimbursing them for the ingredient</p> <p>13 costs; is that right?</p> <p>14 MR. LAVINE: Object to form.</p> <p>15 A. Yes. I acknowledged that there was</p> <p>16 profit margin in the current ingredient cost</p> <p>17 formula.</p> <p>18 Q. (By Mr. Cole) And that if -- if that</p> <p>19 margin were to be eliminated, then Georgia would</p> <p>20 have to pay a higher dispensing fee to providers</p> <p>21 to make up for the lost margin on the ingredient</p> <p>22 cost side; is that fair?</p>	<p>1 health or for long-term care or any other</p> <p>2 provider.</p> <p>3 We may review that, but it -- it would</p> <p>4 actually be an additional exercise.</p> <p>5 Q. Going back to the let's say mid to late</p> <p>6 '90s time period when the dispensing fee paid by</p> <p>7 Georgia Medicaid was roughly in the \$4 to \$4.63</p> <p>8 range, do you believe that the dispensing fee</p> <p>9 paid by Georgia Medicaid during that time frame</p> <p>10 was adequate to cover pharmacies' dispensing</p> <p>11 costs?</p> <p>12 A. No.</p> <p>13 Q. And in the home infusion setting -- if</p> <p>14 at that level -- if -- if the \$4.63 was not</p> <p>15 adequate to cover a retail pharmacy's dispensing</p> <p>16 costs, then I assume you would agree with me that</p> <p>17 it certainly did not cover the dispensing costs</p> <p>18 of a home health pharmacy or some other pharmacy</p> <p>19 that administered prescriptions in the home</p> <p>20 infusion setting.</p> <p>21 MR. SULLIVAN: Object to the form.</p> <p>22 A. Agreed.</p>
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<p>1 MR. LAVINE: Object to form.</p> <p>2 A. That's fair.</p> <p>3 Q. (By Mr. Cole) And would that approach</p> <p>4 apply even more in the home infusion setting</p> <p>5 where you have pharmacies incurring even greater</p> <p>6 dispensing costs?</p> <p>7 MR. SULLIVAN: Object to form.</p> <p>8 A. No. That equation that we spoke about</p> <p>9 was only looking at the acquisition cost of the</p> <p>10 drug, not the -- the overhead.</p> <p>11 Q. (By Mr. Cole) What do you mean by</p> <p>12 that?</p> <p>13 A. When we were talking about the fact</p> <p>14 that there was margin in the ingredient cost of</p> <p>15 the drug, the cost by which the pharmacy</p> <p>16 purchased the drug -- when you're talking --</p> <p>17 you're talking about an additional cost to</p> <p>18 dispense.</p> <p>19 So changing the ingredient cost and</p> <p>20 getting that more in line with the actual</p> <p>21 acquisition cost would not necessarily mean that</p> <p>22 we would adjust and make a differential for home</p>	<p>1 Q. (By Mr. Cole) Is it fair to say, Mr.</p> <p>2 Dubberly, that in assessing whether to increase</p> <p>3 the dispensing fee, it has been the policy of the</p> <p>4 Georgia Medicaid program to consider the margin</p> <p>5 on ingredient cost?</p> <p>6 MR. LAVINE: Object to form.</p> <p>7 A. It's been the practice.</p> <p>8 Q. (By Mr. Cole) And there's nothing</p> <p>9 wrong with that practice as -- as far as you are</p> <p>10 aware; is that fair?</p> <p>11 MR. LAVINE: Object to form.</p> <p>12 Q. (By Mr. Cole) Did you answer that</p> <p>13 question? I'm sorry. If you did --</p> <p>14 A. No.</p> <p>15 Q. -- I couldn't hear it on the</p> <p>16 speakerphone.</p> <p>17 A. No. I was trying to -- to reassess the</p> <p>18 -- the language of your question.</p> <p>19 Is it possible to restate it?</p> <p>20 Q. Well, earlier you testified that -- you</p> <p>21 know, that the Georgia Medicaid program obviously</p> <p>22 complies with -- in the day-to-day operation of</p>

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<p>1 that the, quote, underpayment on the dispensing 2 fee is a result of overpayment on the ingredient 3 cost. 4 THE COURT REPORTER: Mr. Cole? 5 MR. COLE: Yes? 6 THE COURT REPORTER: We're about to run 7 out of videotape. We need to -- 8 MR. COLE: Yes? 9 THE COURT REPORTER: -- take a quick 10 break. 11 MR. COLE: That's fine. 12 THE VIDEOGRAPHER: This is the end of 13 tape No. 5. Going off the record at 5:10 p.m. 14 (Deposition in recess, 5:10 p.m. 15 to 5:21 p.m.) 16 THE VIDEOGRAPHER: This is the 17 beginning of tape No. 6 in the deposition of 18 Jerry Dubberly. Going on the record at 5:21 p.m. 19 Q. (By Mr. Cole) Mr. Dubberly, when we 20 left off, we were talking about the -- the margin 21 on ingredient costs and how that fit in with an 22 underpayment to providers for dispensing costs.</p>	<p>1 MR. LAVINE: Object to form. 2 A. Yes. 3 Q. (By Mr. Cole) Do you have any reason 4 to believe that practice -- let me start over. 5 When you joined the Georgia Medicaid 6 program, is it your understanding that that 7 practice existed prior to your joining Georgia 8 Medicaid? 9 A. Yes. 10 MR. LAVINE: Let me object to form. 11 Q. (By Mr. Cole) Is it your understanding 12 that that practice, like some of the other topics 13 we've talked about today, was a practice employed 14 by other state Medicaid programs? 15 MR. LAVINE: Object to form. 16 A. Yes. 17 Q. (By Mr. Cole) In other words, Georgia 18 wasn't the only state that was overcompensating 19 providers on ingredient costs at the same time 20 that they were undercompensating providers for 21 their dispensing costs; correct? 22 MR. LAVINE: Object to form.</p>
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<p>1 And I believe you said -- you took 2 issue with my last question and said that it 3 worked the other way around or something like 4 that. 5 Do you remember that question? 6 A. I do. 7 Q. Can you explain a little more -- when 8 you say it was the "other way around," what do 9 you mean by that? 10 A. You were stating that we overpaid on 11 the ingredient portion because we underpaid on 12 the dispensing fee, and it's actually the 13 opposite. 14 We underpay on the dispensing fee 15 because we overpay on the ingredient. It's a 16 subtle difference, but I think it's important. 17 Q. That practice, as you just stated it -- 18 and that is, if I have it correctly, underpaying 19 on dispensing costs because you overpay on 20 ingredient costs, has that practice been in place 21 at Georgia Medicaid as far back as you can 22 recall?</p>	<p>1 MR. SULLIVAN: Object to form. 2 A. Correct. 3 Q. (By Mr. Cole) Would you say that -- 4 that most of the states, if not all of the states 5 that you communicated with or have communicated 6 with, given your position as the Georgia State 7 Medicaid director -- that the majority of those 8 states have employed a similar practice? 9 MR. LAVINE: Object to form. 10 And I'd request you clarify whether 11 this is a question you're asking as an official 12 opinion of the Georgia department or his personal 13 opinion you're seeking now. 14 MR. COLE: It's not a personal opinion. 15 I'm asking -- I'm asking him as the 16 representative of the Georgia Medicaid program if 17 it's his understanding, based on the 18 communications that he has had with other states, 19 that those other states had a similar practice of 20 overcompensating providers on the ingredient cost 21 while they undercompensated providers for their 22 dispensing costs.</p>

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<p>1 MR. SULLIVAN: Object to the form.</p> <p>2 A. Yes, that is my understanding.</p> <p>3 Q. (By Mr. Cole) Can you think of any</p> <p>4 state that did not have that practice?</p> <p>5 MR. LAVINE: Object to form.</p> <p>6 A. No.</p> <p>7 Q. (By Mr. Cole) Mr. Lavine asked you</p> <p>8 some questions about whether Georgia has received</p> <p>9 pricing information directly from manufacturers.</p> <p>10 And I believe you testified, Mr.</p> <p>11 Dubberly, that in certain instances, the Georgia</p> <p>12 Medicaid program has received ASP information</p> <p>13 from certain manufacturers in connection with</p> <p>14 settlement agreements.</p> <p>15 Do you remember that testimony?</p> <p>16 A. That's correct. And then I was</p> <p>17 refreshed with another document that reminded me</p> <p>18 that we also have received other documentation as</p> <p>19 well.</p> <p>20 Q. Referring to the -- the ASP information</p> <p>21 that was supplied by certain manufacturers, I</p> <p>22 believe you said that the program does not retain</p>	<p>1 time.</p> <p>2 And I apologize. I was a little</p> <p>3 confused when you gave your earlier answer, and I</p> <p>4 don't believe I -- I understood what you were</p> <p>5 trying to say regarding the reimbursement of</p> <p>6 compounded drugs versus admixture drugs.</p> <p>7 A. Admixtures are not considered to be</p> <p>8 compounded drugs, and compounded are reimbursed</p> <p>9 using the sum of the average wholesale price of</p> <p>10 each individual component.</p> <p>11 Q. Is that a -- a discounted average</p> <p>12 wholesale price or an undiscounted average</p> <p>13 wholesale price?</p> <p>14 A. It's an undiscounted.</p> <p>15 Q. And why is it that compounded drugs are</p> <p>16 reimbursed in that manner?</p> <p>17 A. Compounded -- well, compounded drugs</p> <p>18 are reimbursed in that manner because compounding</p> <p>19 takes a pharmacist to actually mix the</p> <p>20 medications, calculate the -- calculate the</p> <p>21 individual components, weigh the components out,</p> <p>22 often doing a process called "geometric dilution"</p>
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<p>1 the ASP information because it's not part of the</p> <p>2 state plan and that it's typically shredded; is</p> <p>3 that right?</p> <p>4 A. That's correct.</p> <p>5 Q. If -- if Abbott or any of the other</p> <p>6 defendants in these cases had submitted ASP</p> <p>7 information to the State, would you have any</p> <p>8 reason to believe that that information would</p> <p>9 have been treated any differently?</p> <p>10 MR. LAVINE: Object to form.</p> <p>11 A. No.</p> <p>12 Q. (By Mr. Cole) Do you believe it would</p> <p>13 be treated in the same manner as the other ASP</p> <p>14 information supplied by other manufacturers?</p> <p>15 MR. LAVINE: Object to form.</p> <p>16 A. Yes, it would be treated the same.</p> <p>17 Q. (By Mr. Cole) Mr. Lavine asked you</p> <p>18 some questions about how Georgia reimbursed for</p> <p>19 compounded drugs versus admixture drugs.</p> <p>20 Do you remember those questions?</p> <p>21 A. I do.</p> <p>22 Q. Could you explain that for me one more</p>	<p>1 with topical products.</p> <p>2 It's much more involved than -- than</p> <p>3 any of the other dispensing actions, including</p> <p>4 simple admixtures.</p> <p>5 Q. Is there a dispensing fee that goes</p> <p>6 along with compounded drugs?</p> <p>7 A. It's the same dispensing fee as the</p> <p>8 normal reimbursement methodology we mentioned</p> <p>9 before.</p> <p>10 Q. So let me see if I understand.</p> <p>11 The Georgia Medicaid program for</p> <p>12 compounded drugs reimburses providers at an</p> <p>13 undiscounted AWP level --</p> <p>14 A. Correct.</p> <p>15 Q. -- correct?</p> <p>16 A. Correct.</p> <p>17 Q. And that would be higher than the</p> <p>18 reimbursement level for noncompounded drugs;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And that -- that higher reimbursement</p> <p>22 is actually given to the providers on the</p>

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<p>1 that language to you in his line of questioning.</p> <p>2 Isn't it also a reasonable</p> <p>3 interpretation of that language that the -- a</p> <p>4 dispensing fee linked to EAC is what the -- is</p> <p>5 what HCFA is disapproving?</p> <p>6 MR. LAVINE: Object to form.</p> <p>7 MR. SULLIVAN: Object to form.</p> <p>8 A. That could be, yes.</p> <p>9 Q. (By Mr. Robben) In other words, the</p> <p>10 situation that you described earlier today where</p> <p>11 there's some margin on the ingredient side so</p> <p>12 that affects the reimbursement of dispensing fees</p> <p>13 isn't prohibited, but linking the dispensing fee</p> <p>14 specifically to the cost of the product is.</p> <p>15 MR. LAVINE: Object to form.</p> <p>16 A. That could -- that could be the --</p> <p>17 their intent in denying this.</p> <p>18 Q. (By Mr. Robben) Regardless of how that</p> <p>19 -- regardless of what these regulations meant or</p> <p>20 what HCFA's interpretation of them was, any time</p> <p>21 Georgia set its dispensing fee and set its</p> <p>22 ingredient cost reimbursement, it submitted that</p>	<p>1 BY MR. COLE:</p> <p>2 Q. While he's looking for it, Mr.</p> <p>3 Dubberly, Mr. Lavine asked you at one point if --</p> <p>4 if this practice of overcompensating on the -- on</p> <p>5 the ingredient cost and undercompensating on the</p> <p>6 dispensing fee was -- was a secret practice, and</p> <p>7 I believe you said (interruption); is that true?</p> <p>8 THE COURT REPORTER: I'm sorry. You</p> <p>9 cut out there.</p> <p>10 Q. (By Mr. Cole) Mr. Lavine asked you</p> <p>11 whether this practice of overcompensating on the</p> <p>12 ingredient cost and undercompensating on the</p> <p>13 dispensing cost was a secret practice, and you</p> <p>14 said, "No, not at all"; correct?</p> <p>15 A. Correct.</p> <p>16 Q. Georgia never did anything to conceal</p> <p>17 or hide this practice from CMS or HCFA; isn't</p> <p>18 that true?</p> <p>19 MR. LAVINE: Object to form.</p> <p>20 A. That is correct.</p> <p>21 Q. (By Mr. Cole) And it was -- you told</p> <p>22 me that it was a -- a -- it was common among all</p>
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<p>1 state plan to HCFA for approval, didn't it?</p> <p>2 A. That's correct.</p> <p>3 Q. And if HCFA had questions about the</p> <p>4 state plan, Georgia did the best it could to</p> <p>5 answer all those questions; correct?</p> <p>6 A. Correct.</p> <p>7 Q. At the end of the day, HCFA approved a</p> <p>8 state plan for Georgia; correct?</p> <p>9 A. That is correct.</p> <p>10 MR. ROBBEN: That's all the questions I</p> <p>11 have.</p> <p>12 MR. COLE: Philip, could you do me a</p> <p>13 favor and pull the -- the document that is --</p> <p>14 it's a two-page memo from HHS regarding the</p> <p>15 Arkansas state plan amendment transmittal No.</p> <p>16 8924.</p> <p>17 MR. ROBBEN: Sure. This is in your</p> <p>18 exhibits?</p> <p>19 MR. COLE: Yeah. It's from August</p> <p>20 1989.</p> <p>21</p> <p>22 REEXAMINATION</p>	<p>1 of the states, at least the states that you</p> <p>2 interacted with, that they also followed a</p> <p>3 similar practice; correct?</p> <p>4 MR. LAVINE: Object to form.</p> <p>5 A. That is correct.</p> <p>6 Q. (By Mr. Cole) And are you aware of any</p> <p>7 discussions among the state Medicaid programs to</p> <p>8 somehow conceal this practice from the federal</p> <p>9 Medicaid administrators at HCFA or CMS?</p> <p>10 MR. LAVINE: Object to form.</p> <p>11 A. No, I'm not.</p> <p>12 Q. (By Mr. Cole) And given your</p> <p>13 experience in dealing with CMS and/or HCFA, do</p> <p>14 you think that CMS or HCFA was aware of this</p> <p>15 practice employed by not only Georgia but all of</p> <p>16 the other states that you dealt with?</p> <p>17 MR. LAVINE: Object to form.</p> <p>18 A. It calls for me to identify what they</p> <p>19 knew. I would think that they would know, but I</p> <p>20 don't have proof that they -- that was a --</p> <p>21 something they were aware of.</p> <p>22 Q. (By Mr. Cole) Let me put it this way:</p>

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<p>1 Would it surprise you for HCFA or CMS to say that</p> <p>2 it had no idea that states, including Georgia,</p> <p>3 were following this practice throughout the mid</p> <p>4 to late '90s?</p> <p>5 MR. LAVINE: Object to form.</p> <p>6 A. I would be highly surprised by that</p> <p>7 statement.</p> <p>8 MR. COLE: Do you have the document,</p> <p>9 Philip?</p> <p>10 MR. ROBBEN: We have it. It's being</p> <p>11 marked.</p> <p>12 (Whereupon a document was</p> <p>13 identified as Exhibit Georgia 036.)</p> <p>14 Q. (By Mr. Cole) Mr. Dubberly, I'm about</p> <p>15 to show you a -- or the court reporter is about</p> <p>16 to hand you a memo dated August -- August of</p> <p>17 1989. It's from HCFA to the associate regional</p> <p>18 administrator of Region VI regarding the Arkansas</p> <p>19 state plan amendment.</p> <p>20 I -- well, let me just ask you: Have</p> <p>21 you ever seen this document before?</p> <p>22 A. No, I have not.</p>	<p>1 also raises" -- do you see that paragraph?</p> <p>2 A. I do.</p> <p>3 Q. It reads, "The dispensing fee also</p> <p>4 raises a number of issues and questions. It</p> <p>5 would appear that the proposed dispensing fee is</p> <p>6 \$4.39 plus .095 percent of the EAC.</p> <p>7 "As we have explained previously, the</p> <p>8 reasonable dispensing fee determination must be</p> <p>9 separate and distinct from the EAC determination</p> <p>10 and unrelated to the price of the drug."</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Did I read that accurately?</p> <p>14 A. You did.</p> <p>15 Q. And that language from Exhibit 36</p> <p>16 tracks the language in Exhibit 14 that Mr. Lavine</p> <p>17 read to you, does it not?</p> <p>18 MR. LAVINE: Object to form.</p> <p>19 A. Let me look at 14.</p> <p>20 Q. (By Mr. Cole) If you go to Exhibit 14,</p> <p>21 sir, the -- the second-to-last paragraph, I</p> <p>22 believe Mr. Lavine read to you where it says, "We</p>
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<p>1 Q. Have you ever seen the document that</p> <p>2 Mr. Lavine had shown you, the August 12th, 1994</p> <p>3 memo from HCFA to the regional administrators?</p> <p>4 I'm sorry. I don't have the exhibit</p> <p>5 number handy, but it was the one that -- it was</p> <p>6 Sally Richardson.</p> <p>7 MR. COLE: Do you remember the number,</p> <p>8 Mark?</p> <p>9 MR. LAVINE: No. Sorry. I'm busy</p> <p>10 trying to organize documents and --</p> <p>11 MR. ROBBEN: It was 14.</p> <p>12 MR. COLE: Thank you, Philip.</p> <p>13 Q. (By Mr. Cole) Had you seen Exhibit 14</p> <p>14 before today's deposition?</p> <p>15 A. No, I had not.</p> <p>16 Q. Going back, sir, to the exhibit that</p> <p>17 we've just marked -- and I'm sorry. What -- what</p> <p>18 number was that?</p> <p>19 MS. TOWNES: 36.</p> <p>20 Q. (By Mr. Cole) 36.</p> <p>21 If you look at the fourth paragraph,</p> <p>22 sir, that -- that begins, "The dispensing fee</p>	<p>1 would also clarify our policy that a dispensing</p> <p>2 fee determination must be separate and distinct</p> <p>3 from the EAC determination and unrelated to the</p> <p>4 cost of that" -- "of the drug product."</p> <p>5 Those same words appear in Exhibit 36</p> <p>6 in the fourth paragraph; isn't that right?</p> <p>7 A. Yes. They're consistent.</p> <p>8 Q. And based on the context in which that</p> <p>9 statement was made in Exhibit 36, would you agree</p> <p>10 with me that this notion of separate and distinct</p> <p>11 that HCFA is discussing here relates to whether</p> <p>12 states should be basing the dispensing fee as a</p> <p>13 percentage of the EAC?</p> <p>14 MR. LAVINE: Object to form.</p> <p>15 A. Can you rephrase the question.</p> <p>16 Q. (By Mr. Cole) Yes.</p> <p>17 And I know I'm going fast, but I'm --</p> <p>18 I'm just trying to get you out of here as soon as</p> <p>19 possible.</p> <p>20 My question is that: Looking at the</p> <p>21 context in which that statement is made in</p> <p>22 Exhibit 36, would you agree with me that this</p>

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